

Debate on *Dār al-Harb* and *Dār al-Islām*: A Study in Context of British India

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Abstract

It is an admitted fact that the Muslims were united during the life time of Prophet Muhammad (Peace be upon him) but since his demise, the Muslims are disunited not only in the worldly matters but also in the religious affairs. Why it is so? Despite the fact that Islam has been blessed the Muslims with the facility of *Ijtihād*, through which the *Mujtahidīn* can address and solve the unprecedented issues of the Muslims. But our history confirms that in almost all matters the *Ulamā* and *Muftīs*, belonging to different schools of Islamic Jurisprudence have always made different interpretations of the Islamic canons and have given different *fatāwās* regarding different issues, faced by the Muslims. During the British rule over India there were many controversial issues among the *Ulamā*, *Muftīs* and Islamic Theologians of India. One of the issues, whether the British India was a *Dār al-Harb* or *Dar al-Islam*? Was never settled down unanimously by the Muslim *Ulamā* and *Muftīs*. Even today, this question is yet to be answered. The article under review is an attempt to determine the actual status of the British India as a country from the Muslims' point of view.

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Key words:

Dār al-Islām, Dār al-Ḥarb, Muftī, Fatwa, Jihād, Mujāhid

Introduction

Throughout the history, Muslim Scholars, Jurists and *Ulāmā* divided the world in two domains i.e. the *Dār al-Islām* and *Dār al-Ḥarb*. Both of the terms are Arabic where *Dār al-Islām* mean the land of Islam and in broader spectrum, the land of peace while *Dār al-Ḥarb* mean the land of war. The division of Fuqahaon *Dār al-Ḥarb* and *Dār al-Islām* is mainly because of the theoretical work of *Ḥanafī* School and its founder *Abū Hanīfah Al Nu'man bin Ṭhābit*. According to the *Hanafī* Jurists, the rights of those Muslims who live outside the jurisdiction of courts of *Dār al-Islām* or the territories under Islamic rule, can't be enforced by the courts of Islamic State because their jurisdiction don't extend outside the *Dār al-Islām* or into the *Dār al-Ḥarb*. During British Colonialism when India came under British rule, this debate surfaced again among Islamic Scholars of different school of thoughts, this time in the context of a British ruled India. Among them, some argued that India under British rule is *Dār al-Ḥarb* and issued *Fatwās* in light of *Abū Hanīfah's* work while other denied these *Fatwā*.

Proceedings to Jurisprudence

Both *Dār al-Islām* and *Dār al-Ḥarb* are Arabic terms, which mean the abode of peace and the abode of war respectively. In the book *Bayān Lin-Nās*, issued by Al Azhar, it's clearly stated that the concept of categorizing countries as *Dār al-Kufr* and *Dār Islām* is a matter of *Ijtihād* made by learned scholars.¹ According to many *Muftīs* whenever a land is declared a *Dār al-Ḥarb*, it becomes obligatory for the Muslims of that very land, either

¹ <https://archive.islamonline.net/?p=688>

to resort to *Jihād* to convert that land back into *Dār al-Islām* or if they are not in a position to do so then they will have to perform *Hijrat* (migration) from that land to any other *Dār al-Islām*.

Hazrat Imām Abū Hanīfa have set three conditions, and if these exist in a country, that country be declared a *Dār al-Harb*. These are; if non-Islamic laws are enforced in it, if its borders touch many non-Muslim countries and if Muslims and other *zimmīs* are not residing in it in peaceful conditions.² Zayn Al-‘Ābidīn b Ibrāhīm Ibn Nujaym write in this context, “According to *Abū Hanīfah*, the position of a person who embraces Islam in *Dār al-Harb* and does not migrate [to *Dār al-Islām* is like that of a *ḥarbī* [alien non-Muslim] in the sense that his property is not protected by the law of the land in *Dār al-Harb*”³

In opposition to Abu Hanifa, The *ijtihād* of *Hazrat Imām Shāf‘ī* is that *Dār al-Islām* can never be converted into *Dār al-Harb* under any condition. His argument is that even if Non-Muslims occupy a land of Muslims or a *Dār al-Islām* and even if they bring it under their jurisdiction and enforce their laws, still it will remain *Dār al-Islām*. According to *Shaf‘ī* school of thought, Prophet Muhammad (PBUP) quoted “*al Islāmyah’ lowa’ layo’*

²https://shodhganga.inflibnet.ac.in/bitstream/10603/205140/10/10_chapter3.pdf

³ Zayn al-‘Ābidīn b. Ibrāhīm bin Nujaym, *al-bahr al-raiq sharh kanz-al-daqi‘iq* (Cairo: Dar al kutub al Arabiyah, 1978).

laalai'hi" mean that "Islam surpasses (every creed) and is not surpassed (by anything)" (*Al-Fath* 3/218)⁴

The other two Schools of Islamic Jurisprudence i.e. *Hazrat Imām Mālik* and *Hazrat Aḥmad Bin Ḥanbal* argue that without any condition, if any land come under the jurisdictions of *Kufr*, It will be a *Dār al-Ḥarb*. Their only disagreement with *Hanaḥī* school is that they don't proceed with any conditions unlike *Hanaḥī* school who proceed with three conditions.⁵

The Paradigm of British India and the Division of *Fuqahā*

Those who either declared the British India a *Dār al-Ḥarb* or refused to accept it a *Dār al-Islām* and those who declared it a *Dār al-Ḥarb* and affirmed either *Jihād*, obligatory for *the Muslims of that land or advised them to migrate to a *Dār al-Islām* (to perform *Hijrat*) are referred to as under:

For the first time, it was *Hazrat Shāh Abdul Azīz*, the illustrious son of *Hazrat Shāh Walīullāh* who before, the cataclysm of 1857 declared India *Dār Al-Ḥarb* through a *fatwa*. The text of the *fatwa* goes as under:

When infidels get hold of a Muhammadan country and it becomes impossible for the *Musalmāns* of the country and of the people of the surrounding districts to drive them away, or to retain reasonable hope of ever doing so; and the power of the infidels increases to such an extent, that they can abolish or retain the ordinance of Islam according to their pleasure and no one is strong enough to seize on the revenues of the country without

⁴Encyclopaedia of Jurisprudence, government of Kuwait. *al-Mosowa-al-fiqhiya-al-kuwatiya*.

⁵Abū Yala, *al-Muta'mid fi Usool al-dīn* (Beirut: Dār-Al-Mashriq, 1974), 276.

the permission of the infidels and the *Musalmān* inhabitants do no longer live so secured as before such a country is politically a country of the enemy (*Dār al-Harb*).⁶

Another son of Ḥazrat Shāh Walīullāh, Ḥazrat Shāh Raf‘uddīn, who succeeded his brother, Ḥazrat Shāh Abdul Azīz as *Imām* of his followers, also considered the British India a *Dār al-Harb*.⁷

Muhammad Ṭhanāullāh Pānīpatī, a disciple of Ḥazrat Shāh Walīullāh and who belonged to the *Mujaddidī* order of Sufism was a popular *Mufassir* of his time also declared the British India a *Dār al-Harb* and the Muslims of the British India as *Mustamīn*⁸ (tenants).

Similarly Syed Ahmad of Delhi, the torch bearer of the *Mujāhidīn* Movement was of the view that the major part of India under the British rulers was a *Harb*⁹[*Dār al-Harb*].

To Mūlavī Abd al-Haī, the nephew of Ḥazrat Shāh Abdul Azīz the Christian Empire in India was a *Dār al-Harb*. The text of his *fatwa* goes as under:

“The Empire of the Christian from Calcutta to Delhi, and other countries adjacent to Hindustan proper (i.e. the North-West Provinces), are all the Country of the enemy (*Dār al-Harb*), for idolatry (*Kufr* and *Shirk*) is

⁶W.W. Hunter. *The Indian Musalmans*, (Lahore: Premier book house, 1974), 120.

⁷https://shodhganga.inflibnet.ac.in/bitstream/10603/52382/9/09_chapter%203.pdf

⁸Bhat Ali. *Legal Status of India*, 66.

⁹Shāh Ismā‘īl. *Sirat-ulMustaqeem*, ((MustatabJarnabil, Comp: Persian, Kutub Khān Ashrafia, Rashed Company, n.d.),107.

everywhere current, and no recourse is made to our holy law. Whenever such circumstances exist in a country, the country is a *Dār al-Harb*. It is too long here to specify all conditions but the opinions of all lawyers agree in this that Calcutta and its dependence are the country of enemy (*Dār al-Harb*)".¹⁰

It is worth mentioning here that majority of the *Ulamā* of *Deoband* since the days of *Mawlānā Qāsim Nānotavī*, while considering the British India a *Dār al-Harb* have declared *Jihād* obligatory for the Indian Muslims for the liberation of their mother land.¹¹ *Mawlānā Rāshīd Ahmad Gangohī* in a *fatwa* not only declared the India under the British rule a *Dār al-Harb* but called the non-Muslim women in India, *Harbi*.¹² Apart from these a number of other *Ulamā* including *Hājī Imdādullāh Mohājir Makkī*, *Mūlānā Munīr Nānūtoī*, *Mūlānā Anwar Shāh Kāshmīrī*, *Mūlānā Hussain Ahmad Madnī*, *Sayed Muhammad Miān*, *Muftī Azīzur Rahmān*, *Muhammad Inshāllah* and *Mūlānā Manāzīr Ahasn Gīlānī* were convinced that the British India was not a *Dār-al Islām* but a *Dār-al Harb*.¹³

¹⁰ W.W. Hunter. *The Indian Musalmans*, (Lahore: Premier book house, 1974), 120.

¹¹ Muhammad A Bhat, "Legal Status of India in Islam-an Analytical Study of Approaches of Indo-Pak Ulama in Modern Times." **Ph.D Thesis.**, Aligarh University, India, 2004.

¹² Bhat, *Legal Status of India in Islam-an Analytical Study of Approaches of Indo-Pak Ulama in Modern Times*, 69.

¹³ Bhat, *Legal Status of India in Islam-an Analytical Study of Approaches of Indo-Pak Ulama in Modern Times*, 70-75.

In Bengal *Hājī Shari't Ullāh*, the founder of the *Farīdī* sect and the originator of the *Fāīdī* movement in East Bengal and who was the disciple of *Shaikh Tāhir al-Sunbul al-Makkiwās* convinced that due to the alien administration, the Muslims of Bengal cannot hold congregational prayers of *Jumā* and *Eīds*, therefore, he declared Bengal a *Dār al-Ḥarb*.¹⁴ The Bengali peasantry was in the forefront of the *Farīdī* Movement and their prime targets were the Hindu landlords and British Indigo planters.

Hājī Shari't Ullāh was followed by *Mawlānā Wajīh al-Dīn Bihārī* a prominent *A'lim* and Principal of *Madrassā 'Āliya* Calcutta who also considered India a *Dār al-Ḥarb*.¹⁵

Similarly, the *Sirāj al-Akhhbār Afghānī*, a newspaper started by *Sardār Mahmud Tarzī* (Father in-law of Amir Amānullāh Khān of Afghanistan in 1910, not only advocated effectively the Pan-Islamism but also dubbed the British India a *Dār al-Ḥarb*¹⁶ time and again in its articles and editorials.

In 1913 due to Cawnpore mosque incident, *Khwāja Hassan Nizāmī* of Delhi issued an inflammatory pamphlet which was eventually proscribed by the government and a leaflet was found stating that India was no longer *Dār al-Arām* (The abode of Peace) but a *Dār al-Ḥarb*.¹⁷ (The land of warfare).

¹⁴Pakistan Historical Board. *A Short history of Hind-Pakistan*, (Karachi: Pakistan Historical Board, 1963), 424.

¹⁵Prof. Muhammad Salīm, *Tanzim-e-Asāteza-e-Pakistan* (Lahore: Idara-e-Taleemī Tehqīq, 1987), 93.

¹⁶Salīm, *Tanzim-e-Asateza-e-Pakistan*, 119.

¹⁷P.C Bamford. *Histories of the non co-operation and Khilafat Movement.*, Government of India Press, 1925, 114.

It is also worth-mentioning here that there were also a number of *Ulamā* and *Muftīs* to whom the British India was not a *Dār al-Harb* and they had always opposed *Jihād* and *Hijrat* from the British India.

After the war for Independence 1857, which according to a study took the precious lives of some five lac Muslims and which for the first time shook the foundation of the Christian Empire in India, compelled the British to seek support from some of the *Ulamā* of Islam. Accordingly *Fatāwa* were procured from Law Doctors of Mecca, Northern India and the Calcutta Muhammadan Society, in which the idea that India was not a *Dār al-Harb* was supported and therefore, *Jihād* was declared unlawful in that country.

The *Fatwa* given in this regard on 17 July 1870 goes as under:

"The *Musalmāns* here are protected by Christian and there is no Jihad in a country where protection is afforded, as the absence of protection and liberty between *Musalmāns* and Infidels is essential in a religious war and that condition does not exist here. Beside it is necessary that there should be a probability of victory to *Musalmāns* and glory to the Indians. If there be no such probability, the *Jihād* is unlawful."¹⁸

The above cited *fatwa* have been signed by *Mowlvī Alī Muhammad*, *Mowlvī Abdul Haī*, *Mowlvī Fazlullāh*, *Muhammad Naim* and *Mowlvī Rahmatullāh* all from Lucknow, *Mowlvi Qutb ul-dīn* of Delhi, *Mowlavī Lutfullāh* of Rampur and others.¹⁹

¹⁸ Bamford, Histories of the non co-operation and Khilafat Movement, 122.

¹⁹Bamford, Histories of the non co-operation and Khilafat Movement, 122.

Mowlavī Karāmat Alī of the Calcutta Muhammadan Society vehemently opposed Hājī Shari‘tullāh, the originator of the famous Farīdī Movement on his declaring Bengal a *Dār al-Harb* and dubbed him as the *Khārijī* of Bengal.²⁰ As to him (Karāmat Alī) the British India was a *Dār al-Islām*, therefore he opposed *Jihād* against the British rulers of India. W.W. Hunter has reproduced his *Fatwaas* under:

“For *Jihād* can by no means be lawfully made in *Dār-ul-Islām*. This is so evident that it requires no argument or authority to support it. Now, if any misguided wretch, owing to his perverse fortune, were to wage war against the Ruling Powers of this country, British India, such war would be rightly pronounced rebellion; and rebellion is strictly forbidden by the Islamic Law. Therefore such war will likewise be unlawful; and in case anyone would wage such war, the Muslim subjects would be bound to assist their Rulers, and, in conjunction with their Rulers, to fight with such rebels”.²¹

A research scholar, Mr. Fazlur Rahmān, in his research work, titled, A Study on Life and Works of Mowlānā Karāmat Alī Jaunpūrī (1800-1873 A.D.) states that “Mūlānā supported his argument by citing the authority of some legal digests, such as the *Fatāwa ‘Ālamgīrī*, *Hidāyah*, *Durrul-Mukhtār*, *Sharhi-Vikāyah*, *Jamiu-Rumūz* etc.”²²

²⁰ <https://defence.pk/pdf/threads/faraizi-movement-in-east-bengal.295071/>

²¹ W.W. Hunter. *The Indian Musalmans* (Lahore: Premier book house, 1974), 219.

²² Fozlur Rohman, *A Study on the Life and Works of Maulana Karamat Ali Jawnpuri* (India: Cotton College Guwahati-1, Assam, 2004), 218.

Sir Saiyid (Syed) Ahmad Khan, the founder of Aligarh School of Thought was of the view that India is neither *Dār al-Islām* nor *Dār al-Harb* but something of both.²³

After the First World War those *Khilāfatists*, who considered the British India a *Dār al-Harb* and belonged to anti-Gandhi group but were pro-Hijrat decided, after *fatawā* were secured from *Mūlānā Qiyām-ud-Dīn Abdul Bārī*²⁴ and *Mūlānā Abul Kalām Āzād*²⁵ to perform *Hijrat* and emigrate to Afghanistan. Consequently, in the hot summer of 1920 tens of thousands Indian *Muhājirīn* crossed the then Durand line (now Pak-Afghan border) through both regular and irregular routes and entered into Afghanistan. In the lengthy list of *qafilā Sālārs*, the names of Arbab Raza Khan of Tehkal, Peshawar, Jan Muhammad Junejo of Sind, Ahmad Ali of Lahore, Abdul Ghaffār Khān of Utmānzai, Chārsada, Salīm Khān of Teri, Kohat, Akbar Jan, Peshawar, Akbar Khan, Hazara and Abdul Wahab of Dehli are worth-mentioning.²⁶

It is worth-mentioning here that M.K. Gandhi initially supported the Ali brothers and the *Khilāfat* Movement but opposed the Indian Muslims' *Hijrat* to Afghanistan. Needless to say, the Central *Khilāfat* Committee as

²³Hardy, Thomas. *The Muslim of British India* (Cambridge University Press, 1972), 112.

²⁴Syed Rais Ahmad Jafri, *Rare documents Part-II* (Lahore: Muhammad Ali Academy, 1967), 53.

²⁵Jafri, *Rare documents*, 53.

²⁶Government of NWFP, *Special Branch Record Bundle No. 30, File No. 477* (Peshawar: Provincial Archives Khyber Pakhtunkhwa, 1920), 49-68.

well as the *Jamiatul-Ulamā-e Hind* were also under the influence of Gandhi regarding discouraging *Hijrt* to Afghanistan.

Some of the prominent Muslim *Ulamā* and *Muftis* who opposed the *Hijrat* Movement were as under:

For instance *Mūlānā Ashraf Alī Thānvī* remarked about those, who led and supervised the *Hijrat* Movement:

میں تو کہتا ہوں یہ عاقل نہیں آکل ہیں۔۔ خود گمراہ ہوئے مسلمانوں کو گمراہ کیا۔²⁷

Moreover, he gave a very brief *fatwā* in which it was stated that the conditions laid down in the *Shari'a*, whereby *Hijrat* becomes obligatory upon Muslims were still non-existent therefore, *Hijrat* from British India was not mandatory.²⁸

Similarly, *Pir Mihr Alī Shāh of Golra Sharīf* denounced the *Hijrat* in the following words:

اس ہجرت کے جواز کی کوئی وجہ کتاب و سنت اور دیگر دلائل شرعیہ سے نہیں ملتی۔ نہ اس قسم کی ہجرت صحابہ نے کئے۔ وہ ہجرت تو اس واسطے تھی کہ مسلمانوں کو اقامتِ دین سے مشرک منع کرتے تھے، تا آنکہ حضور پر نور صلی اللہ علیہ وآلہ وسلم بمعہ جمیع بنی ہاشم و بنی عبدالمطلب کو شعب ابی طالب میں محصور ہونا پڑا۔ مگر یہاں ایسے اسباب موجود نہیں۔ نیز ہندوستان میں سات کروڑ مسلمان ہیں۔ اگر بالفرض سب پر ہجرت فرض ہے تو کوئی ملک اتنی بڑی جماعت کو بسا نہیں سکتا۔ پس بوجہ فقدانِ استطاعت یہ فرض ساقط ہے۔²⁹

²⁷Prof. Sa'īd Ahmad, *Jeddo Jehād-eAzādī awar Maulana Ashraf Ali Thanvi*(Rawalpindi: 1972), 71.

²⁸Saeed, *Jeddo. Jihad-e Azadi* awar Maulana Ashraf Ali Thanvi, , 71.

²⁹. Faiz, Ahmad Faiz Maulana, "Swaneh Hayat-e-Hadrat Pir Mehr Ali Shah Sahib GolraSharif, quoted in Umm-e Habiba, Bisween sadi kii beda main Tehrik-e Hijrat awar is kay Mussalmāno per athsarāt" **M.A. thesis** (History Department, University of the Punjab, Lahore, 1991), 130.

Apart from the Central *Khilāfat* Committee and the *Jamīatul-Ulamā-e Hind* there were some *Ulamā*, who discouraged the intending *Muhajirīn* to Afghanistan. For instance on the 9th of August 1920, seventeen *Ulama* assembled in the garden of the Chief of Hoti, in Mardan (Khyber Pakhtunkhwa) and gave unanimously the following *fatwa* regarding *Hijrat* Movement:

"*Hijrat* as a means of service to Islam is binding on every Muslim individual only when all the conditions for *Hijrat* as laid down in the Shara [*Sharī'a*] demand such service to Islam. Even when *Hijrat* for service to Islam is demanded of every individual according to the conditions laid down in the Shara [*Sharī'a*] a defaulter from or non-complier with the service to Islam through *Hijrat* shall not be a *Kafir* (non-believer) but only a sinful *Musalamān*.

The following persons are exempted from such service to Islam:

- i. Those unable to bear the expenses, means of subsistence during journey and transport,
- ii. Underage lame, blind and old persons and many others whose specifications are given in the shara [*Sharī'a*]."

The *Ulamā*, who have written and signed this *fatwā* are Syed Ghulām Habīb Gujurgarhi, Mūlvī Mahmud, Mohammad AbdurRehmān of China[a village near Mardan], Sher Mohammad Khoī, Mūlvī Abbās Khān, Nūr Habīb, Mohammad Umar, Mūlvī Shaista Gul of Maṭa, Abdul Khāliq, Pīr Ahmad Alī Shāh, Kutab Ālam Sahibzada, Mohamad Abdul Hannān, Mūlvī Abdul Hannān

*Hotī, Mūlvī Obaidullah, Mūlvī Aslam, Qāzī Fazl-e-Haq of Jalala and Mūlvī Mohammad Ismā'īl of Mānkī, now at Shedo (a place near Nowshera).*³⁰

Similarly, on August, 17, 1920, the *Ulamā* of Badaber, Mattani, Nowshera, *Ziārat Kākā Sāhib* and of the surrounding areas gathered together in an open place outside of a mosque which was opposite to the house of Nawāb Mohammad Azam Khan, 1st class Magistrate, at Kotla Mohsin Khan to discuss about the *Hijrat*, whether it is permissible or obligatory. After consulting their religious books and pondering over the matter for a considerable length of time, they came to the conclusion that *Hijrat* was a duty, but non-compliance would not be a heresy.³¹

Conclusion:

History of the Colonized India confirms that the overwhelming majority of those *Ulamā* and *Muftīs*, who were the followers of Hazrat *Imām Abū Ḥanīfa* and who were impressed either by the ideology of Wahhabism or the teaching of *Hazrat Shāh Walīullāh* (Deobandi Ideology) were of the view that the British India was a *Dār al-Harb* and not a *Dār al-Islām*.

But the majority *Ulamā*, who belonged to other schools of thoughts, mainly *Ahl-e Hadīth* did not support the stance of the Hanafite *Ulamā* regarding the legal status of the British India. Similarly, to those *Ulamā* and *Muftīs* who were under the influence of the British rulers of India or were their loyal title holders and government servants, the India under the British was not a *Dar al-Harb*.

To a very small group of *Ulamā* the matter, like the issues of *Taqīd* and *Āmīn-i-Biljāhar* was controversial. The one reality, which cannot be denied

³⁰Confidential Political Diaries/Special Branch Record, 121, 122.

³¹Confidential Political Diaries/Special Branch Record, 112.

by any quarter, is that the *Muftīs* and *Ulamā* of the Indian Muslims were never ever united over the query, whether the British India was a *Dār al-Harb* or *Dār-al Islām*. It was mainly because of the different sects and different Schools of Thoughts among the Indian Muslims. The divide and rule policy of the British is even visible in the religious affairs of the Indian Muslims during the British rule over India.

One of the great lessons, we can derive from the Colonized India's history is "a divided nation cannot protect even their genuine moral, legal and religious rights but a united nation can not only protect her own rights but the rights of other oppressed nations as well".